

U.S. Department of Labor

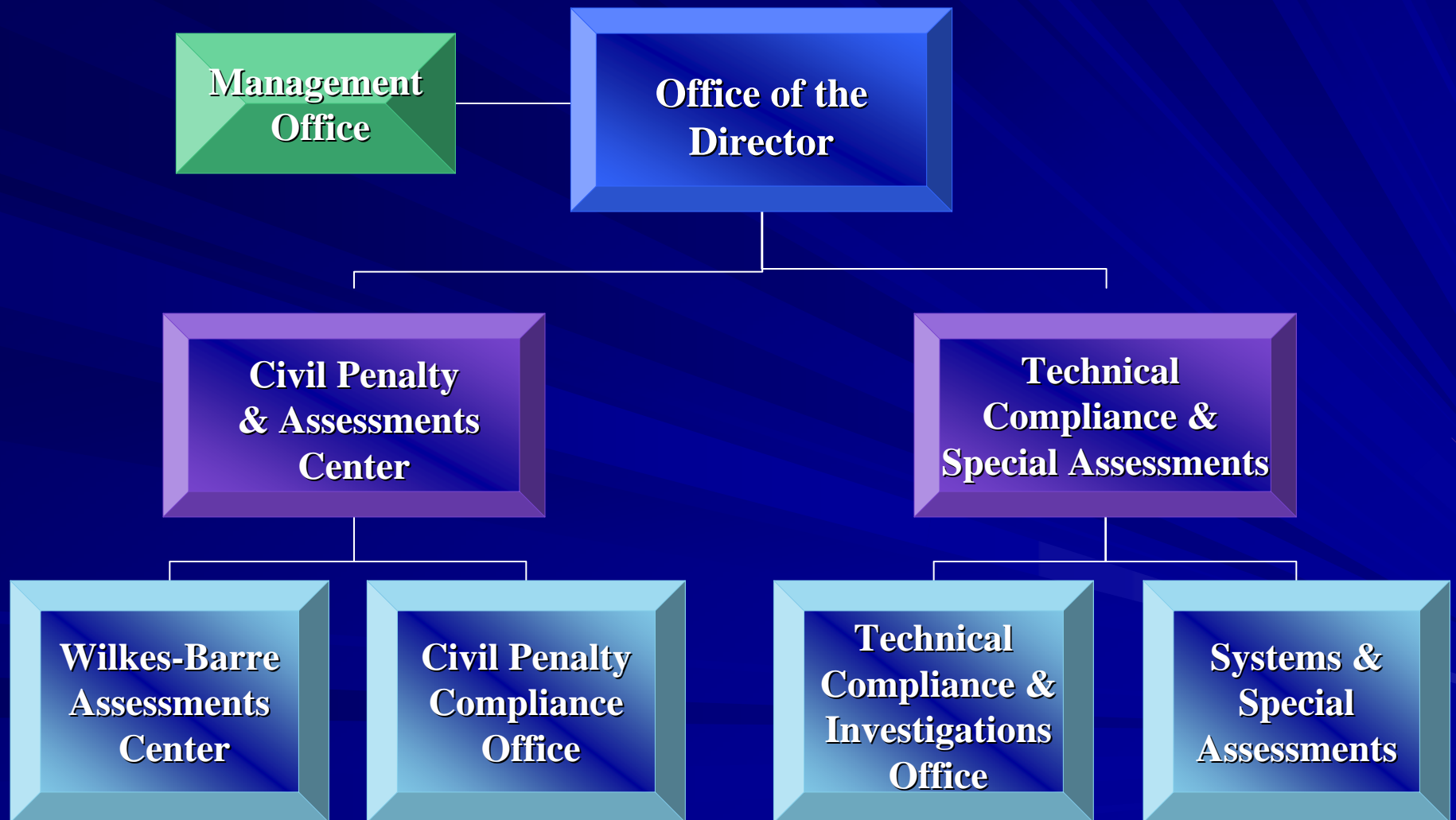
Mine Safety and Health
Administration

Office of Assessments

Topics of Discussion

- Organizational Structure & Functions
- Penalty Assessment Criteria
- Types of Assessments
- Pre-Assessment Opportunities
- Collection of Civil Penalties
- Post-Assessment Opportunities
- Delinquent Debt
- Small Business Regulatory
Enforcement Fairness Act of 1996
- Helpful Suggestions
- Contact Information

Organizational Structure



Office of the Director Functions

Oversees the overall program and management functions of the office, which include:

- Administering the assessments program pertaining to the assessment and collection of civil penalties under the Mine Act
- Administering the special investigations program pertaining to discrimination complaints filed under Section 105(c) of the Mine Act; and knowing or willful violations under Section 110(c) of the Mine Act

[Back to Organizational Chart](#)

Wilkes-Barre Assessment Center Functions

- Process violations into regular- & single-penalty proposed assessments
- Approve Legal Identity Report submittals
(MSHA 2000-7 Form Instructions)
- Conduct research & analysis on mine ownership

[Back to Organizational Chart](#)

Civil Penalty Compliance Office Functions

- Track status of civil penalty cases & maintain financial & case records
- Prepare cases for litigation
- Process payments
- Collect delinquent penalties

[Back to Organizational Chart](#)

Technical Compliance & Investigations Office Functions

- Oversee the investigation process for:
 - Complaints of miner discrimination
 - knowing or willful criminal violations
 - Denial of entry & injunctive cases
- Review judicial decisions

[Back to Organizational Chart](#)

Systems & Special Assessments Office Functions

- Specially assess violations
- Maintain assessment database management system
- Update policy & procedures under [30 CFR 100](#) - Criteria and Procedures for Proposed Assessment of Civil Penalties
- Conduct data analyses

[Back to Organizational Chart](#)

Management Office Functions

- Respond to Freedom of Information Act requests & provide violation history reports
- Process recalls & re-assessments involving civil penalties
- Administer assessment program information & administrative/management activities

[Back to Organizational Chart](#)

Penalty Assessment Criteria

Operators in violation of the Federal Mine Safety and Health Act of 1977 (Mine Act) can be issued a proposed penalty assessment ranging from \$60 to \$60,000, based on the following five criteria set forth in *30 CFR 100.3*:

- Size of business
- History of operations
- Degree of negligence
- Degree of gravity
- Demonstrated good faith

Size of Business

Determination of the size of the mine & size of controlling entity of which the mine is a part, is calculated by the previous year's:

- Tonnage produced for production coal operators
- Employee hours worked for metal & nonmetal production operators & independent contractors

History of Violations

Determined by the total number of paid or final violations cited during a 24-month period, starting 30 months prior to the issue date of the violation which is used to calculate the:

- Number of violations per inspection day for production operators
- Average violations per year for independent contractors

Excessive History of Violations

- Applicable to operators having greater than 2.1 violations per inspection day & independent contractors having greater than 50 violations per year
- Not applicable to mines with 10 or fewer violations or 104(a) non-S&S timely-abated citations

Degree of Negligence

Inspector's evaluation of measures taken by the operator to protect or correct conditions or practices which caused or allowed the violation to exist

Degree of Gravity

Inspector's evaluation of the seriousness of the violation, as measured by the likelihood of the occurrence

Demonstrated Good Faith

- Timely abatement of a violation issued for a regular assessment
- Possible adjustments to penalty amount include:
 - A reduction of 30% if violation is corrected within the time set by the inspector
 - An additional 10 penalty points if violation is not corrected within the time set by the inspector

Types of Assessments

- Single

- Regular

- Special

Single-Penalty Assessment

Computer-generated fixed penalty of \$60 for violations, as set forth in *30 CFR 100.4*:

- Section 104(a) non-S&S citations
- Violations corrected within time set by inspector
- No excessive history of violations

Regular Assessment

Computer-generated penalty ranging from \$72 to \$60,000 for violations, as set forth in *30 CFR 100.4*:

- Orders, 104(d), 104(a) S&S, & 104(a) non-S&S citations not qualifying for single penalty
- Possible adjustments to penalty amount include 30% reduction if violation is abated within time set by inspector; or additional 10 penalty points if violation is not abated within time set by inspector

Special Assessment

Individual review & determination of penalty assessment up to \$60,000 for violations, as set forth in *30 CFR 100.5*:

- Fatalities & serious injuries
- Unwarrantable failure to comply with a mandatory health & safety standard
- Operating in defiance of a closure order
- Denial of right of entry by an authorized representative

continued

Special Assessment

continued

- Individuals liable under Section 110(c) of the Mine Act
- Imminent danger
- Acts of discrimination under Section 105(c) of the Mine Act
- Extraordinarily high negligence, gravity or other unique aggravating circumstances *

* Violations that do not fall into any other special assessment categories such as multiple violations of health standards; 30 CFR Part 48; and, 30 CFR Part 50

Special Assessment Guidelines

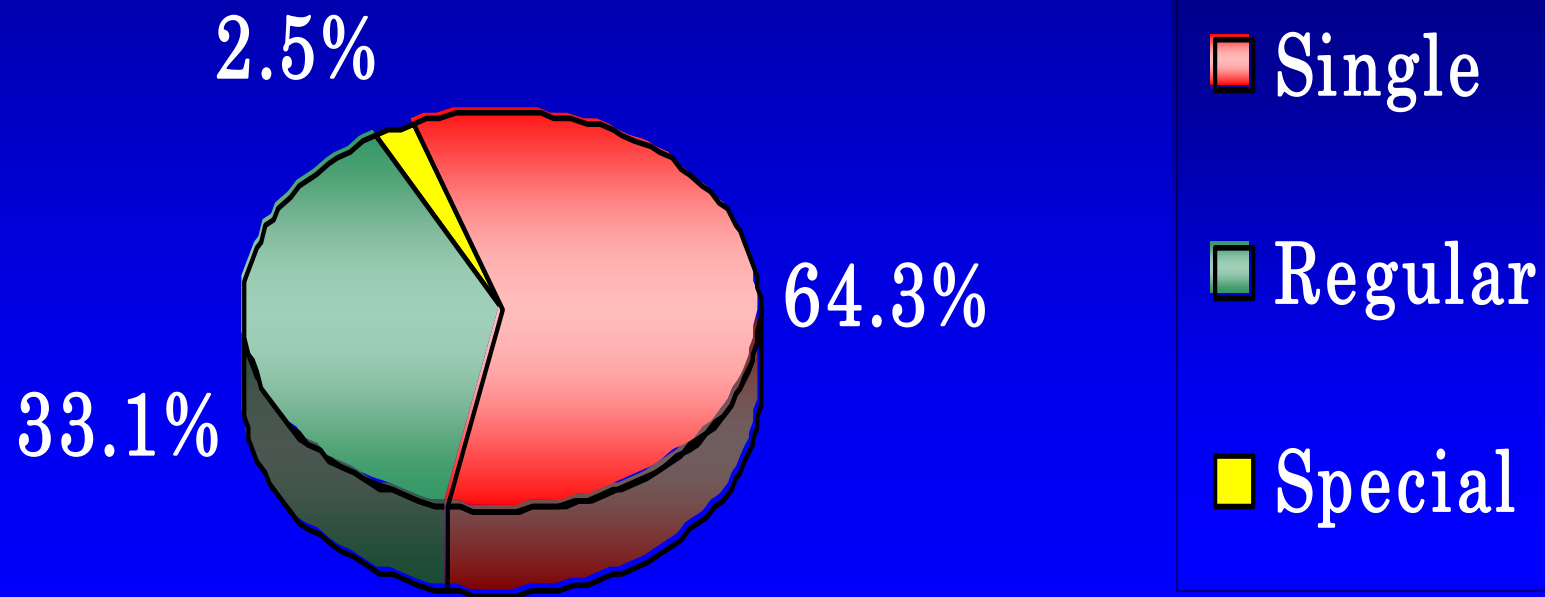
A point system, *MSHA Guidelines for Special Assessment Penalties*, is an additional tool used by the Agency to compute special assessment penalties

Special Assessor's Review Criteria

In addition to the 5 assessment criteria, a special assessor reviews the following information, in order to determine a special assessment:

- Citations & orders
- Special assessment review request
- Inspector's notes
- Safety & health conference notes
- Report of investigation
- Sketches & photographs
- Relevant portions of mine plans

2004 Assessed Violations by Type



2004 Assessed Violations by Average Amount

■ Regular Assessment \$290

■ Average special assessments:

■ Non-accident-related \$1,797

■ Accident-related \$21,627

■ Director/Officer/Agent \$472

■ Miner smoking \$275

Pre-Assessment Opportunities

An operator may participate in the following pre-assessment activities:

- Accompany an authorized representative during an inspection
- Attend the inspection close-out conference
- Request a safety & health conference
- File notice of contest/application for review

Inspection Close-Out Conference

Immediately following an inspection, an informal meeting is held between the inspector & operator to:

- Discuss the conditions observed during the inspection
- Notify the operator of their right to request a safety & health conference

Safety & Health Conference

An operator may submit additional information and/or request a safety & health conference with the district manager, as set forth in *30 CFR 100.6*:

- The request must be made through the district manager
- The request must be made within 10 days of the notification of rights to a safety & health conference

Notice of Contest/ Application for Review

- The operator may file in writing to the Federal Mine Safety & Health Review Commission (FMSHRC) within 30 days upon receipt of the issuance of the citation or order
- Filing does not affect the enforcement process

Collection of Civil Penalties

A notice of proposed assessment is sent by certified mail to the operator, as set forth in *30 CFR 100.7*, in which they have 30 days to either pay or contest the penalty

Post-Assessment Opportunities

- Financial review of operator's ability to continue in business
- Civil penalty contest
- Appeal of Administrative Law Judge (ALJ) decision
- Further appeal options

Financial Review

- It is initially presumed that the assessment will have no effect on the operator
- To apply for relief, the operator must submit a written request to the district manager within 30 days of receipt of the proposed assessment. As set forth in 30 CFR 100.3(h), the operator must:
 - Provide financial statements for the most recent 2-year period
 - Show how payment of the penalty will adversely affect their ability to continue in business

Civil Penalty Contest

- The operator must file a contest in writing to MSHA's Civil Penalty Compliance Office within 30 days upon receipt of the proposed assessment, as set forth in *30 CFR 100.7*
- The penalty amount is decided by an Administrative Law Judge (ALJ) in a legal proceeding

Appeal of ALJ Decision

- The operator or MSHA must appeal to the Federal Mine Safety & Health Review Commission (FMSHRC) within 30 days of the ALJ decision
- The case is decided by the FMSHRC in a legal proceeding

Further Appeal Options

- U.S. Court of Appeals
- U.S. Supreme Court

Delinquent Debt

Delinquent debt is collected by MSHA,
Department of Treasury, & Department of
Justice representatives

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Small businesses may submit comments
about MSHA or other Federal agency
enforcement actions by contacting:

- 1-888-REG-FAIR (1-800-734-3247)
500 W. Madison Street, Suite 1240
Chicago, Illinois 60661

Helpful Suggestions

- Maintain an effective safety & health program
- Maintain a zero or low violation average
- Timely abate any violations issued
- Pay penalties on time
- Participate in pre-assessment opportunities

For inquiries, please contact the
Office of Assessments

Telephone: (202) 693-9700

Fax: (202) 693-9701

or

visit MSHA online at

www.msha.gov